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## MISCELLANEA

BY MORRIS H. MORGAN

### *Petitor*

THE warning that *petitor* in the sense of 'candidate for office' does not occur in classical prose has long stood in the principal authorities on usage. Thus, in the sixth edition of the *Antibarbarus*, Schmalz summarizes what is to be found in earlier editions and in the lexicon of Georges as follows: '*Petitor* wird in klass. Prosa nur in gerichtlicher Beziehung gebraucht von dem, der auf etwas *Anspruch* macht; besonders ist es ein *Kläger* in einem Privatprozeesse. — Bei Hor. Od. 3, 1, 11, ferner bei Scip. Afr. in Macrob. Sat. 3, 14, 7, sowie *N. Kl.* bei Sueton. (*Iul. Caes.* 23) bedeutet es *Bewerber um ein Amt*, welcher *Kl. candidatus* hiess, vgl. Bagge<sup>1</sup> p. 39.' Harper's *Lexicon* says of the word in its political sense 'not in Cicero.'

Nevertheless, *petitor* 'candidate for office' is found in Cicero twice: 1) *Mur.* 44, *petitorem ego, praesertim consulatus, magna spe, magno animo, magnis copiis et in forum et in campum deduci volo.* 2) *Planc.* 7, *his levioribus comitiis diligentia et gratia petitorum honos paritur.*

The passages escaped the compilers of the old lexicons to Cicero (hence probably the statements in the *Antibarbarus* and our lexicons) although of course they are to be found in Merguet. Neither have the editors of Horace used either passage, although the first well illustrates *descendat in campum petitor*.

Cicero's brother Quintus also made use of *petitor* in our sense four times in his *Commentariolum Petitionis* (§§ 18, 25, 42, 45). It would be strange enough if *petitor*, 'candidate' were actually lacking in classical prose, considering how common are *peto*, *petitio*, and *competitor*, referring to office seeking. In general usage, however, it was pushed out by *candidatus* (no doubt originally election slang), which is often

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The reference is to Bagge's *de Eloc. Suetonii* where he merely sends us back to Krebs and to Georges.

employed by Cicero, and indeed just before and just after our first passage; and by his brother twice (*ibid.* §§ 31 and 44). The old-fashioned term was still understood, we see, in the time of Suetonius; but Macrobius, after quoting the passage from Scipio in which it occurred, felt it necessary to explain to his readers that it meant *candidatus* (*ibid.* 8).

It may be mentioned here, for the sake of adding to the record, that in the *Lex Coloniae Genetivae* of B.C. 44 (*C. I. L.* II, 5439 ch. 132) we have the curious double expression *petitor candidatus* three times and *candidatus petitor* once. This looks much like that adjectival use of *candidatus* which is said to occur only in poetry and in post-Augustan prose (see the *Lexicon*). It seems to describe the office-seeker *after* he has entered his name as a regular candidate. My friend Professor A. A. Howard informs me that in Suetonius *Aug.* 10, *candidatum se ostendit*, according to his own collations the Parisinus 6116 (S. XII) has *candidatum petitorem* and the Parisinus 5801 (S. XII) *petitorem* in the margin and *candidatum* in the text. These MSS. represent two different classes, and in view of the inscription just cited I think it possible that something is to be said for the double expression in Suetonius.

### *Quin with the Subjunctive in Questions*

The use of *quin* with the subjunctive in direct questions has been passed with scant notice by authors of grammars and collectors of statistics. Hence in Lane's *Latin Grammar* § 1982, I was led to write as if *quin* were found but once in this usage: Pl. *Mil.* 426 — an example drawn from Kienitz, *de quin particulae ap. pr. scr. lat. usu*, p. 4. This is in fact the stock example; cf. Lübbert, *Jenaer Litt. Zeit.* 1879, p. 65. Since then I have met with other occurrences, and it may be worth while to print them here.

1) Plaut. *Mil.* 426, Sc. *me rogas hem qui sim?* PH. *quin ego hoc rogem quod nesciam?* Here, as Kienitz observes, no other mood could stand; cf. Ter. *Andr.* 749, My. *satin sanu's qui me id rogites?* DA. *quem igitur rogem qui hic neminem alium videam?*

2) Ter. *Phorm.* 1015, ego, *Nausistrata, esse in hac re culpam meritum non nego; sed ea quin sit ignoscenda?* Dziatzko suggested in a

note that this *quin* clause might be nothing but a direct question (thus getting rid of numerous forced explanations), and he is now followed by Elmer in his note and by Hauler in his text and note. None of them, however, cite parallels with *quin*, confining themselves to subjunctives with *cur non* and *quidni*.

3) Ter. Eun. 811, Th. *quid nunc agimus?* Gn. *quin redeamus?* Here D<sup>2</sup> and G according to Fabia read *redimus*, which might of course stand (so Kienitz, p. 4, though no recent editor), but there seems no strong reason for such a change nor for the colon of our printed editions, instead of which I have written the second interrogation mark. It must be noted, however, that in A we have *quin* corrected to *quid* by the 'corrector antiquissimus' or A<sup>2</sup> of Hauler and Kauer, a hand which they consider not much later than A itself. If we accept this correction we must read with Fleckeisen<sup>2</sup>: *quid? redeamus: etc.*

4) Lucretius 1, 798,

*quin potius tali natura praedita quaedam  
corpora constituas, ignem si forte crearint,  
posse eadem demptis paucis paucisque tributis,  
ordine mutato et motu, facere aeris auras,  
sic alias aliis rebus mutarier omnis?*

5) Tac. Ann. 4, 11, *quin potius ministrum veneri excruciares, auctorem exquireret, insita denique etiam in extraneos cunctatione et mora adversum unicum et nullius ante flagitii compertum uteretur?*

The next two examples are fragments, so that we cannot be certain that the sentences were independent questions; still, they have every appearance of being such. Hence I append the question mark.

6) Lucil. ap. Non. 425, 32,

*quin potius vitam degas sedatu' quietam,  
quam tu antiquiu' quam facere hoc fecisse videris?*

7) Lucil. ap. Non. 300, 27,

*quin totum purges, devellas me atque deuras,  
exultes et sollicitus?*

So far there can be, I think, little doubt of the readings. The next two are much less certain.

8) Cic. *Rep.* 6, 14, *quin tu aspicias ad te venientem Paulum patrem?* Here the Palimpsest and Macrobius fail us, but the other mss. of the *Somnium* read *aspicias*. Editors since Halm print his emendation *aspicis*. Munro, however, in his note to *Lucr.* 1, 798 lends the weight of his deliberate judgment to the subjunctive. It ought perhaps to be added that below in § 15 we have *quid moror in terris? quin huc ad vos venire propero?*

9) Cic. *Legg.* 1, 14 QUINT. *quid enim agam potius aut in quo melius hunc consumam diem?* MARC. *quin igitur ad illa spatia nostra sedisque pergamus?* Here codd. AB<sup>2</sup> give the subjunctive (though Vahlen notes that the *a* in A seems due to a correction). Editions since Halm have *pergimus*. The emendation is distasteful. The indicative with *quin* generally gives an impatient tone to the question, which often becomes practically a command or an exhortation to the speaker himself; cf. *Rep.* 6, 15, cited above. But a polite suggestion is in place here, and that seems indicated by the dubitative nature of the subjunctive. Still it is curious that, just as in the *Republic*, so here in the *Latus* we have in the immediate neighborhood of our passage an undoubted case of *quin* with the indicative, § 13 *quin igitur ista ipsa explicas nobis his subsicivis, ut ais, temporibus et conscribis de iure civili subtilius quam ceteri?*

### Quintilian's Quotations from Horace

For the reading *intonsis capillis* in *Hor. C.* 1, 12, 41, Quintilian is our only ancient authority. Against him all the mss. of Horace, as well as Servius and Charisius, give *incomptis capillis*. It is not surprising, therefore, that the majority of the editors (e. g. Bentley, Keller, Orelli-Hirschfelder, Müller, Wickham) read the latter. But Kiessling and Smith follow Quintilian, rightly as I believe. Without entering into other reasons for this reading (on which cf. the two editors just mentioned), I wish merely to show that Quintilian deserves respect as an authority on the text of Horace. The attempt seems worth while because Keller, in his note on the passage in the *Epilegomena*, calls Quintilian's reading false and refers to his note on *C.* 1, 13, 2. There he is dealing with misquotations of Horace by the grammarians and cites one each from Priscian, Victorinus, Flavius Caper, Charisius and

Diomede, two from Servius, and our passage from Quintilian. All of these he considers errors due to the habit of quoting from memory. Now although everybody knows that misquotations are made by very many writers and in all times and languages, yet Keller's dictum here seems a little too sweeping. It is uttered as if he had not taken sufficient account of the memories of individuals, and as if he had not stopped to inquire whether Quintilian and the other writers mentioned were really alike in their methods of quoting from Horace. To examine the works of all of them would perhaps be a long task, but it is not difficult to find Quintilian's record in this matter.

He quotes Horace twenty-four times and refers to passages, without quoting them, three times. The references may be found so conveniently in Meister's edition, p. 346, that I omit them here. In only four of these does Quintilian's evidence<sup>1</sup> differ from that of our mss. of Horace. The first is the passage already cited. The second is *A. P.* 311, where nobody doubts that, as against the present tense in codd. B and C, Quintilian (1, 5, 2) is right with *sequentur*, agreeing as he does with the other mss. and with Porphyrio. The third is *S.* 1, 4, 11 where Quintilian 10, 1, 94 has: *ab Horatio dissentio, qui Lucilium fluere lutulentum et esse aliquid quod tollere possis putat*. Here the mss. and editions of Horace give:

*cum flueret lutulentus, erat quod tollere velles.*

The only real difference lies in the word *possis*, because it is evident that the passage appears in Quintilian as a paraphrase and that the other changes are due to his use of *putat* to introduce it. The fact that *esse aliquid* fits in metrically with *quod tollere possis* is possibly a mere accident, so that we cannot feel certain that Quintilian thought that he was quoting these two words. The fourth passage is *Ep.* 1, 1, 73 f., which reads thus in Horace:

*olim quod volpes aegroto cauta leoni  
respondit, referam.*

Quintilian 5, 21, 20, speaking of the use of fables, has: *et Horatius ne in poemate quidem humilem generis huius usum putavit in illis versibus:*

*quod dixit vulpes aegroto cauta leoni.*

<sup>1</sup> Omitting, of course, mere orthographical variants, like *classes* and *classis*.

Here we certainly seem to have a slip of the memory ; but here and in the use of *possis* in the third passage are the only places in which we can convict Quintilian of this fault. Therefore, until an equally good record can be made out for the grammarians mentioned, we should be slow to class him among them. He either had a good memory for Horace, or else he usually verified his quotations.

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LYSIAS 12, 44, οὕτως οὐχ ὑπὸ τῶν πολεμίων μόνον ἀλλὰ καὶ ὑπὸ τούτων πολιτῶν ὄντων ἐπεβουλευέσθε, ὅπως μὴτ' ἀγαθὸν μηδὲν ψηφίσῃσθε πολλῶν τε ἰνδεΐς ἴσῃσθε.

Here the vulgate before Bekker had been *ψηφίσῃσθε*, the reading of the inferior mss., while X has the aorist subjunctive. Bekker changed to *ψηφίσαισθε* and he was followed by Sauppe and Scheibe. Cobet, in the course of his restorations of 'Attic Future' forms (*Var. Lect.* p. 177), corrected the old vulgate to *ψηφείσθε*, and this has ever since been the received reading. Although ΦΗΦΙΕΙΣΘΕ might easily engender (palaeographically) ΦΗΦΙΣΗΣΘΕ, still probably X is correct : it is the more difficult and expressive reading, and it is also correct in syntax. The aorist tense is, as usual, used to denote simple occurrence ; they were not to be allowed to pass a single advantageous decree. The future tense with *ἰνδεΐς* denotes the continuing state into which they were to be thrown. How careful Lysias is in his use of the aorist in the dependent moods has already been shown in a note to Lysias 16, 6 in the appendix to my edition. As for the combination of both subjunctive<sup>1</sup> and future indicative within the same sentence in object clauses, cf. Xen. *Symp.* 8, 25 (cited by Goodwin, *M. T.* 339) : οὐ γὰρ ὅπως πλείονος ἀξίως γίνηται ἐπιμελείται, ἀλλ' ὅπως αὐτὸς ὅτι πλείστα ὄρατα καρπώσεται. So, too, in Aeschines 3, 64 needless levelling has been at work in the change of ὅπως μὴ περιμείνητε to ὅπως μὴ περιμένετε because two clauses containing future indicatives follow. Weber (*Entwick. der Absichtssätze*, p. 42) gets rid of the example by bowing to Weidner's dictum that, in such combinations of the aor. subjv. and fut. ind., the aorist with ὅπως μὴ always follows and never precedes.

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<sup>1</sup> For the subjunctive after a secondary tense, cf. Lys. 1, 29 and Aesch. 3, 64 below.

Weber has, however, already accepted the change to ψηφίσθε in Lysias (p. 23), and later on (p. 86) he reads, with Mehler, γνήσεται in the passage in Xenophon.

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CICERO, *Quinct.* 13, *qua in re ita diligens erat quasi ei qui magna fide societatem gererent arbitrium pro socio condemnari solerent.*

A much discussed and emended passage. Long interprets thus: he was as active in this business (i. e. in cheating his partner) as if those who acted as *honest* partners were usually convicted instead of the (dishonest) partner. But with this explanation the word *arbitrium* is unnecessary, and indeed some of the older editors omitted it as a gloss. Others read *ad arbitrium* or *ad arbitrum*, 'before the arbiter;' and Landgraf *per arbitrum* (see p. 44 of his *de Cic. elocutione in or. pro Q. et pro R. Am. conspicua*). Emendation, however, is unnecessary, for we are dealing here with legal language, in which the use of the double accusative with *condemnare* (i. e. *aliquem aliquid*) was common; see Stolz and Schmalz, *Lat. Gr.*<sup>8</sup>, p. 233. In our sentence the accusative of the penalty, *arbitrium*, is retained with the passive voice; cf. Gaius 4, 32 *tantam pecuniam condemnatur*. Cicero says then: 'as if men who acted as honest partners were usually condemned to *arbitrium pro socio*,' that is, were obliged to go before an arbitrator on a question of partnership, for defrauding a partner. This explanation is borne out by *Rosc. Com.* 25 *quae cum ita sint, cur non arbitrum pro socio adegeris Q. Roscium quaero*. The same phrase *arbitrum adigere* with the accusative of a person occurs in *Off.* 3, 66, and without such an accusative in *Top.* 43. Hence we may suppose that the passage in *pro Quinctio*, if not strictly a legal formula, was modelled on or suggested by the certainly legal formula *arbitrum adigere*. And *pro socio* is legal phraseology for 'in a partnership question': cf. *Rosc. Com.* above and *Fl.* 43; *Dig.* 17, tit. 2.

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#### *On the Date of the Oration Pro Roscio Comoedo*

The question of the year in which this speech was delivered has been much discussed and remains undetermined. Probably 77 or 76 B.C. is ordinarily preferred. The latter (first suggested by Fabricius) was favored by Teuffel (cf. Teuffel-Schwabe, 1<sup>8</sup> § 179, 3); it or 77 (Fer-



raci, Orelli, Klotz) is supported by Landgraf (*de Ciceronis elocutione etc.*, p. 47 ff.); and 76 has recently been defended by W. Sternkopf (*Jahrb. für Cl. Phil.* 1895, 1, p. 41 ff.), although he believes that either 74 or 73 is also possible. On the other hand, the year 68, fixed by Manuzio, had the support of Drumann (V, p. 346 ff.), and Schanz adopts it (*Gesch. der Röm. Litt.* I<sup>2</sup>, p. 249); A. Mayr has very lately proposed and defended 66 B.C. (*Wiener St.* 1900, 1, p. 115 ff.). C. A. Schmidt in his useful edition of our speech, Leipzig, 1839, p. 13, (the last edition, except Long's, with a commentary) argued briefly that the date was not earlier than 68 and might be any one of the next few years.

The question is interesting biographically; for if we adopt 77 or 76 we are still in the period of Cicero's youth, before he began to hold public office, although after his return from his studies in Asia. In 68, however, he had already been quaestor and aedile, and had impeached Verres; in 66 he was praetor, advocated the Manilian law, and defended Cluentius. Without entering fully into the arguments which have led the scholars just mentioned to their conclusions, let us see what information about the date can be gleaned from the speech itself.

1) It is a fair inference that the great career of Roscius the actor, which ended only with his death in 62 B.C., was now drawing near its close; cf. § 23 *decem his annis proximis HS sexagiens honestissime consequi poluit: noluit. Laborem quaestus recepit, quaestum laboris reiecit; populo Romano adhuc servire non destitit, sibi servire iam pridem destitit*. The same section contains an allusion to the popularity of the dancer Dionysia and the great sums which she was earning at the time, with the statement by Cicero that Roscius, if he wished, could be earning even more. The only other mention of Dionysia is found in Gellius 1, 5, 3, from which it seems likely that in the year 62 (when Cicero and Hortensius defended Sulla) she was a popular personage.

2) From § 42 we learn that Flavius, whose killing of the slave of Roscius and Fannius had led to the case in which our speech was delivered, had long been dead — *is iam pridem est mortuus*. It appears later, however, that *iam pridem* cannot here refer to a period of much more than two years (see p. 239). But in its context *iam pridem* is not an exaggeration; *two year's dead* is *dead long ago* when the question is one of looking vainly to a dead man for evidence.

3) After the killing of the slave, his owners, who had expected to make money out of his gains as an actor, brought suit against Flavius. Just as the suit was ready to be tried, Roscius concluded a settlement with Flavius. This settlement took place, according to the reading of all our MSS., fifteen years before the delivery of our speech: § 37 *abhinc annis xv*. Of the time of this settlement is also used the expression *iam pridem* (38), and the adjective *vetus* (39). They are contrasted with *nunc*, *nova*, and *recens*, used in the same sections of a proceeding next to be mentioned.

4) Fannius claimed that he, as the partner of Roscius, was entitled to a share of what Roscius received from Flavius under the settlement. Roscius denied this and the question came before an *arbiter*. Under his advice a compromise was effected between them. This compromise took place three full years before the delivery of our speech (*amplius triennium*, 8; *triennio amplius*, 9; *abhinc triennium*, 37). It is this compromise which is called *nova* in 38, *recens* in 39, and of which *nunc* is used in 38.

Summarizing what we have learned thus far, we see that the compromise was of three years standing, that a much longer time intervened between it and the earlier settlement, and that Flavius had died so long ago that *iam pridem* could be used of the event which cut Cicero off from the possibility of calling him as a witness. These facts do not help us at all towards fixing any particular date. Toward this we have, so far, only the *inference* that the speech was delivered in the last years of Roscius, who died in 62 B.C.

5) After the settlement between Flavius and Roscius, the original suit against Flavius was continued by Fannius and finally won by him (§ 41 f.). This end came *after* the compromise which had been effected between Roscius and his partner Fannius (*ibid.*) The *iudex* in this suit was Cluvius, called an *eques* (42, 48), but otherwise unknown to us. The fact that Sulla deprived the *equites* of the privilege of acting as *iudices* in 81 B.C. and that this privilege was not restored to them until the Aurelian Law of 70 B.C. seems to show that Cluvius could not have rendered his decision during the intervening period. It is true that some have supposed that Sulla's law did not refer to the judges in *private* suits such as the one in question (cf. Bethmann-Hollweg, *Der röm. Civilprocess*, II, p. 805; Keller, *Der röm. Civilprocess*, § 10). If

this were so, we should not be helped at all towards a date by the mention of the knighthood of Cluvius. But as Mayr (p. 117) points out,<sup>1</sup> there is not the slightest evidence for a distinction between public and private suits in this matter, and he further adds that there is on record no case wherein a knight acted as a judge which we can certainly ascribe to the period between the Cornelian and Aurelian laws. It follows therefore that Cluvius gave the decision either before (or in) the year 81 or after (or in) the year 70. And inasmuch as his verdict was given *after* the compromise between Fannius and Roscius, which was reached three years before our speech was delivered, and further as Cicero's oratorical career began not earlier than 82 B.C. and probably in 81,<sup>2</sup> and was interrupted by his two years in Asia (79-77 B.C.), we get for the first time something definite towards fixing the date of the speech. The next point affords us something more definite still.

6) Under the settlement mentioned above, Roscius received from Flavius a certain estate. The value of it was among the important topics treated in our speech, and in § 33 Cicero says: *accepit enim agrum temporibus eis cum iacerent pretia praediorum; qui ager neque villam habuit neque ex ulla parte fuit cultus; qui nunc multo pluris est quam tunc fuit. Neque id est mirum: tum enim propter rei publicae calamitates omnium possessiones erant incertae, nunc deum immortalium benignitate omnium fortunae sunt certae; tum erat ager incultus sine tecto, nunc est cultissimus cum optima villa.*

From this passage we learn two things: first, that the estate passed into Roscius's hands at a time when the value of lands was low, *and* (this *and* is important) when the misfortunes of the Commonwealth caused all men to feel uneasy about their holdings; second, that a considerable time must have elapsed since Roscius had received the estate because it came to him as utterly uncultivated land without buildings, whereas now it was in the highest state of cultivation and had on it a very handsome villa. Under the second head we get no immediate helps towards a date for the speech but only further reason for believing that it was delivered long after the troubles between Roscius and Fannius with Flavius began. Under the first head, however, we are led

<sup>1</sup> So also, apparently, Mommsen, *Strafrecht*, p. 209 f.

<sup>2</sup> Cf. *Brut.* 311, 312, 328.

at once to look for a crisis affecting the value of lands. This crisis must be searched for not earlier than the fifteenth year preceding 82 or 81 B.C. (the beginning of Cicero's career) and not later than the fifteenth year before the death of Roscius in 62 B.C.,—that is to say, between the years 97 and 77.

Within these twenty years the Marsic War might at first seem to be the period for which we are in search, and indeed Sternkopf (p. 47) holds that Cicero is referring to it. This war broke out towards the close of 91 and was brought to an end in 88; fifteen years later would give us a choice between 76, 74 or 73 for the delivery of our speech.<sup>1</sup> Two objections, however, may be advanced against any of these dates. The first is that Cluvius the *equus* would thus be found rendering a verdict within the prohibited period (see p. 239). The second and the more important (since some may still hold the view that Cluvius might have acted in a *private* suit) is that we have no evidence of any such *general* depreciation of the value of lands and of any such universal financial anxiety during the Marsic War as Cicero describes in § 33. If Cicero had stopped with the words *cum iacerent praelia praediorum*, we might think that he was referring to land in Etruria (for, as we shall soon see, it is probable that the piece of land which Roscius received from Flavius was situated there); but he says also *omnium possessiones erant incertae*. And there is no allusion elsewhere in the authors to any such general state of uncertainty during the Marsic War.

But within our period of twenty years there was another crisis, namely that caused by the Sullan proscriptions which began towards the end of 82 and extended into the middle of 81. This was a reign of terror which, so far as it concerned matters of property and titles to it, perfectly corresponded to the account given by Cicero in § 33. The state of things described in the speech for Roscius of Ameria makes this evident; cf. also with Landgraf *Paradox.* 46 *qui expulsionones vicinorum, qui latrocinia in agris . . . qui possessiones vacuas, qui proscriptiones locupletium, qui cladis municipiorum, qui illam Sullani temporis messem recordetur*, and Sall. *Cat.* 51, 33 *uti quisque domum aut villam, postremo vas aut vestimentum alicuius concupiverat, dabat operam ut is in proscriptorum numero esset*. To Landgraf's citations

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<sup>1</sup> The year 75 is barred out by Cicero's absence in Sicily.

we may add *pro Caecina* 11 *fundum in agro Tarquiniensi vendidit temporibus illis difficillimis solutionis*, which likewise contains an allusion to the Sullan period; cf. also § 95 of the same speech, where he uses *calamitas reipublicae* as in our speech. Nor does Landgraf refer to the fact that Etruria (Flavius, from whom Roscius received the estate, lived, like the man of *pro Caec.*, in Tarquinii, § 32) was a special centre of fighting and disturbance at the time; in *Rosc. Am.* 20 we find Volterrae still holding out after the submission of Rome herself. We have, therefore, abundant evidence to lead us to adopt the year 81 as the period referred to in § 33. And this will bring us fifteen years later with Mayr to 66 B.C. as the date of our speech, to 70 or 69 (*amplius triennium*, § 8, *abhinc triennium*, § 37) as the date of the compromise, and to some time very soon after the compromise to the verdict of Cluvius, who is thus found acting as a judge after the Aurelian Law gave him the right. The year 66 is in fact the only one which without any forcing fits all the circumstances described in the speech, and it is a year in which we know that Cicero was active, since in it he delivered the speeches *de Imp. Pomp.*, *pro Cluentio*, *pro Fundanio*, and *pro Gallio*. Pompey had just cleared the sea of pirates, and on that element as well as on land it might be said with truth *nunc omnium fortunae sunt certae* (33).

Only two obstacles stand in the way of the general adoption of this date, one of them more than three hundred years old, the other a little over twenty. Neither of these, I think, ought to make us abandon the date which we have reached, I trust, by the natural method of procedure and on rational grounds.

The first obstacle need not detain us long. It is the emendation *v* or *iv* for *xv* in the expression *abhinc annis xv* (37), which stood in the vulgate for centuries down to the text of Klotz, and which, though not printed in the Teubner or Tauchnitz texts, has the support of many scholars, including Drumann<sup>1</sup> and Landgraf.<sup>2</sup> In his first edition

<sup>1</sup> Who thought that the allusion in § 33 was to the time of Spartacus; but I know of no other passage which points to a disturbed condition of land values and titles at that time.

<sup>2</sup> Whose adoption of the year 77 or 76 as the date of the speech must oblige him to accept the emendation, since he thinks that the allusion in § 33 is to the time of Sulla.

Lambinus changed *xv* to *v*, but in his second he read *iv* with Hotman whose reasons for the change he approved. Hotman's note is as follows: 'manifestum mendum. Legendum opinor *iv* id est quatuor. Primum quod iam supra nomen hoc 1555 HS de quo haec controversia est nonnisi ab hinc quadriennium a Fannio in adversaria relatum dicat. Scribit enim amplius triennium. Deinde quod modo repromissionem ab hinc triennium factam confirmet, quam satis constat non multo post Roscii transactionem factam esse. Postremo tamdiu prolatam esse rem mihi certe non fit verisimile.' Long ago Klotz and Schmidt saw that this emendation was based on mere feeling, not on any sound argument. Hotman did not feel that the case against Flavius could have been left undecided for so many years as are required by the reading *xv*; and he felt that Roscius's settlement with Flavius could not have taken place very long before his compromise with Fannius. His feeling is of no consequence in the face of the fact that the ms. reading is a possible one and in face of the language used by Cicero in § 33. For, as Baron<sup>1</sup> remarks, no writer would talk in this strain about a period of only four years.

The second obstacle lies in Landgraf's investigation of the language and style of the speech, from which he draws the conclusion that it must be placed in 77 or 76, soon after Cicero's return from Asia, since it resembles more closely his earlier than his later works and yet differs enough from the earliest to show that it belongs to a kind of transition period. In a brief answer to Landgraf, Mayr (p. 119) points to the fact that our speech is only a fragment and that its 56 sections cannot properly be compared with the 253 sections of the certainly early speeches *pro Quinct.* and *Rosc. Am.* He adds: 'tum si huiusce aetatis scriptorum in singulis libris dicendi usum respicimus, nonne eos a consuetudine sua nonnumquam discedere invenimus? Non hic vel illic post longius quoddam temporis intervallum ad eum, quem antea admiraverant, loquendi usum inscii vel etiam inviti relabuntur? Certe non is sum, qui talia, qualia supra allata sunt, argumenta spernenda esse censeam, sed si ea pugnant cum gravioribus, quae ex rebus ipsis petita sunt, haec illis anteferre non dubito.' And he concludes with

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<sup>1</sup> *Der Process gegen den Schauspieler Roscius.* In *Zeitschr. der Savigny-Stiftung für Rechtsgeschichte*, I (1880), 2, p. 118.

the remark that the case of Roscius Comoedus was not an important one and that consequently Cicero was not likely to have spent much toil upon the speech, so that we need not be surprised if he sometimes falls back into methods of expression which he had abandoned in his greater works. These reasonings by Mayr seem sound, but I hardly think that they are needed, for I am more than inclined to doubt whether Landgraf has actually shown that the language used in this speech really does point to the early period.

Before considering Landgraf's points in detail, a general warning may be in place. If we take up the first volume of Cicero's orations and read them in the order in which they are printed, we feel, as soon as we begin the *Divinatio in Caecilium*, that we are in a different literary atmosphere from that of the *pro Quint.*, *Rosc. Am.*, and *Rosc. Com.* But is not this a misleading feeling, due to the fact that in the *Divinatio* we are suddenly relieved from the technical details of which those works are so full? Perhaps this absence of the difficulties caused by technicalities makes one fancy that the *Divinatio* is written in much better Latin than is really to be found in it. However this may be, we must not think that either it or the Verrines represent Cicero at his best in oratorical style; for these speeches resemble those of his early period much more nearly than they resemble the great speeches of his prime,—the *pro Sestio* for example. The Verrines are in fact treated by Hellmuth<sup>1</sup> as belonging to the earlier period and he finds in them much in common with the earlier speeches, e. g. redundancy, union of synonyms, paronomasia, alliterations, all recalling the style of earlier Latin or the language of the comic poets. Still all these characteristics are found to a less degree in the Verrines than before, so that they exhibit a certain advance in the direction of a purer prose style and less inequality. They are, therefore, called by Thomas<sup>2</sup> 'la dernière oeuvre de jeunesse de Cicéron et la première production de sa maturité.' If public orations like the Verrines must occupy this middle ground is there anything surprising in finding a return to it in a speech written a few years later for an unimportant private suit like that of Roscius? But to return to the points which Landgraf makes: they are five in number.

<sup>1</sup> *Acta Sem. Phil. Erlang.* I, 1877.

<sup>2</sup> *Cicero: Verrines*, Introd. p. 32.

1) Examples of the Asian style consisting of the joining together of pairs of synonymous words. Landgraf cites *oro atque obsecro* (20), *pravum et perversum* (30), *planius atque apertius* (43), *locupletes et pecuniosos* (44), *irasci et suscensere* (46), *consistere et commorari* (48), *ductum et conflatum* (48), *callidus et versutus* (48), *resistere et repugnare* (51). Here are nine pairs and to them we may add three others: *copia et facultate* (2), *conclusa et comprehensa* (15), *sanctos et religiosos* (44),—a total of twelve in all. This means an average occurrence of one pair in about every  $4\frac{1}{2}$  sections of the oration; but in the 253 sections of the *pro Quinct.* and *Rosc. Am.* there are, according to Landgraf's count (p. 48), 127 pairs or one in every two sections. This great difference in proportion, which it does not seem to have occurred to Landgraf to calculate, ought at once to make us suspect the truth of his statement 'totius orationis habitus prioribus similior est quam posterioribus.' Let us turn to two of the later orations, selecting the two which we know were delivered in 66 B.C., the *Imp. Pomp.* and the *pro Cluentio*. Examining the first fifty-six sections in each (the number of sections in our fragment), we find at least fourteen pairs of synonyms in the former and fifteen in the latter, as follows: *Imp. Pomp.*: *deposci atque expeti* (5), *excitare atque inflammare* (6), *necandos trucidandosque* (7), *pulsus superatusque* (8), *repressos ac retardatos* (13), *ornatas atque instructas* (20), *superatam atque depressam* (21), *terrore ac metu* (23), *varia et diversa* (28), *superatos prostratosque* (30), *attenuatum atque imminutum* (30), *vitam ac spiritum* (33), *imperio ac potestate* (35), *meminisse et commemorare* (47); in the *pro Cluentio*: *convicta atque damnata* (7), *finis atque exitus* (7) *portum ac perfugium* (7), *expulsa atque exturbata* (14), *effrenatam et indomitam* (15), *squalore et sordibus* (18), *vi ac necessitate* (19), *breviter strictimque* (29), *initio ac fundamento* (30), *indicia et vestigia* (30), *blanditiis et adsentationibus* (36), *compertum atque deprehensum* (43), *infesta atque inimica* (44), *comperta manifesteque deprehensa* (48), *aperta et manifesta* (54). From this examination it must be apparent that in the matter of the joining of pairs of synonyms Landgraf's view is quite mistaken; for the fact is that herein our oration resembles more closely the two which were delivered in 66 B.C. than the two delivered before Cicero's journey to Asia. More striking is Landgraf's observation that whereas in the *pro Quinct.* and *Rosc. Am.* the word used to connect such synonyms is



*atque* (82 times) or *ac* (45 times), in the *Rosc. Com.* it is *et*, except in §§ 20 and 43 where *atque* appears, while *ac* is never used.<sup>1</sup> Noting that in the certainly later orations Cicero employs *atque*, *ac*, and *et* indiscriminately, Landgraf argues that Cicero had become conscious of his 'Asian' fault of coupling synonyms and that in his struggle against it in the *Rosc. Com.* he purposely employed *et* instead of *atque* (*ac*) which had been his habit. But this observation of Landgraf's is rather curious than practical and the conclusion which he deduces from it cannot be trusted. This is obvious the moment we note that in the first 56 sections of *Imp. Pomp.* we have in the examples given above nine occurrences of *atque* (*ac*) to only two of *et*,—almost exactly the reverse of the figures in the *Rosc. Com.* where are ten of *et* and two of *atque*. On Landgraf's principle we should see in the *Imp. Pomp.* (if we had only the first 56 sections of it) a return to Asianism!

2) Landgraf next notes Cicero's use of the phrases *tantum laborem capere* and *paullulum compendii facere* in § 49, and points out that both phrases are found in Plautus and Terence and that Cicero does not later employ them in the orations. But Landgraf here fails to observe that there is a very good reason why Cicero should employ these colloquialisms in our passage. He is not speaking in his own person, but is giving us an imaginary dialogue, in a truly comic vein, between Roscius and Cluvius. The colloquial colour is just what is wanted, and it proves nothing at all about Cicero's usual style at the time and consequently nothing about the date of the speech, in which it occurs as a mere accident of treatment. Further *tantum laborem capere* (for the commoner *tantum laborem suscipere*) is pretty closely paralleled in *Verr.* 5, 37 *nequaquam capio tantum voluptatis quantum et sollicitudinis et laboris*; and finally in the *De Officiis* 3, 63, Cicero allows himself to say *tantum se negat facturum compendii*. Neither of these usages, therefore, need surprise us in the colloquial passage in our oration.

3) The superlative *novissimus* occurs in § 30 *qui ne in novissimis quidem erat histrionibus, ad primos pervenit comoedos*. The word has a familiar sound to us because Caesar uses it so often, but, as Landgraf notes, it is found nowhere else in the works of Cicero, and indeed

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<sup>1</sup> *fraudis ac furti* in § 26 looks very like a case of synonyms coupled by *ac*.

Gellius (10, 21) remarks that Cicero never used it at all. Hence we might be inclined to think that the word in our MSS. was due to a gloss; but if it is allowed to stand as a ἀπαξ I do not see how it points to the year 76 rather than to ten years later. Varro tells us that his master Aelius Stilo condemned the word, and that within his recollection it was avoided by *senes*. This information comes from Varro's *Lingua Latina* (6, 59; Gell. *ibid.*), and yet we find Varro himself using *novissimus* half a dozen years later in his *Res Rusticae* (1, 2, 11), showing that he had got rid of his master's prejudice. Cicero also was an admiring pupil of Aelius Stilo (cf. *Brut.* 205 ff.), and it seems rather more likely that he would have departed from the teachings of that philologist in a later than in an earlier work. At any rate, there is nothing 'Asian' nor poetical in *novissimus*, and these are the two factors on which Landgraf chiefly relies to prove that the language of the *Rosc. Com.* points to an early date.

4) 5) The adverb *exemplo* (8) and the phrase *exspecto quam mox* (1 and 44) seem certainly to be drawn from the early poets. The former occurs nowhere else in Cicero's writings except in his *Aratea*;<sup>1</sup> the latter is found only here and in *Inu.* 2, 85. Landgraf might have gone even further and noted that in § 1 of our speech we have a perfect septenarius:

expέcto quam mox Chaέrea hac οράtione utάtur.

If this occurred in the proem of an oration, it would indeed be astonishing, but our fragment is wholly without a proem, and possibly it may be that we have here either a quotation or an adaptation from some play, suggested, of course, by the name *Chaerea* which seems to occur only here before imperial times except in the *Eunuchus*. But I should not wish to press this point, and of course neither quoted nor accidental verses prove anything towards a date. Regarding *exemplo* and *exspecto quam mox* as mere words, however, and as words used by the early poets, the question arises whether, because Cicero used them only here, we are therefore to set an early date to the oration. It is certainly true that in the *pro Quinct.* and the *Rosc. Am.* we find a considerable number of such traces of Cicero's reading in the early

<sup>1</sup> In *Att.* 13, 47 *exemplo* is no doubt part of the quotation.

poets, and that those speeches belong to his most youthful period. But in our speech we are dealing with a very small number, in fact with only two, and the evidence is too limited to prove anything at all. This is obvious the moment we begin to apply such a test to orations which we know do not belong to that youthful period. For instance, the Verrines fall ten years later, in 70 B.C., and yet here we find Plautine and Terentian words such as *abitus* (3, 125), a substantive which does not, according to the new *Thesaurus*, occur again in prose until Pliny the Elder; the verb *ablego* four times (2, 73; 74; 79; 5, 82; and in three of these, by the way, joined to a synonym by *atque* or *-que*), and nowhere else in the orations nor, save for a couple of sporadic cases, again in prose until Livy. Eighteen years after the Verrines we find in the *pro Milone* the Plautine *abnuo* (100), its only use in the orations. A few years before this, the *pro Caelio* (56 B.C.) yields us *cum adulescentiae cupiditates deferbuissent* (43), which seems suggested by Ter. *Ad. 152 sperabam iam defervisse adulescentiam*. This rare verb *deferreo* is found once again in the same speech (77), and elsewhere in the orations only in that one of the year 66, a part of which we have examined above for another purpose, the *pro Cluentio* (108). In view of all this we have a right to say that the occurrence of *ex templo* and *exspecto quam mox* in the *Rosc. Com.* does not prove that the speech belongs to the early period.

To conclude, then, the obstacles raised by the arguments of Landgraf are by no means sufficient to cause me to turn aside, to emend the numeral xv, or to adopt the date of 76 for the oration. The year 66 is the earliest upon which a natural interpretation of the fragment will allow us to fix.